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Letter dated 4 May 2009 from the Secretary-General addressed to the President of the Security Council

During the course of the recent conflict in the Gaza Strip and southern Israel, a number of incidents occurred between 27 December 2008 and 19 January 2009, in which United Nations personnel, premises and operations were affected.

In my capacity as the Chief Administrative Officer of the Organization I decided to establish a United Nations Headquarters Board of Inquiry to review and investigate nine of these incidents, in which death or injuries occurred at, or damage was done to, United Nations premises or in which death or injuries occurred, or damage was sustained, in the course of United Nations operations.

My purpose in taking this step was to develop a clear record of the facts of these serious incidents and their causes and of where, if anywhere, bearing in mind the complexities of the overall situation, responsibility for them might lie. This would make it possible for me, inter alia, to identify any gaps that might have existed in the procedures and policies of the Organization and to take any measures and put in place any arrangements that might be needed, with a view to preventing a recurrence of such incidents in the future or at least to mitigating their effects. It would also place me in a better position to determine what steps I might need to take to protect the property and assets of the Organization. These were my aims in establishing the present Board of Inquiry. I would emphasize in this connection that a Board of Inquiry is not a judicial body or court of law: it does not make legal findings or consider questions of legal liability.

I appointed Ian Martin as head of the Board. The other Board members were Larry D. Johnson, Sinha Basnayake and Lieutenant Colonel Patrick Eichenberger. Nina Lahoud served as Secretary. The Board was convened on 11 February 2009. It submitted its report to me on 21 April 2009. In this connection, I recognize the difficulty of conducting investigations such as those with which the Board was tasked, in particular the difficulty in obtaining balanced and reliable evidence from

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which to draw conclusions. I would like to thank the Board of Inquiry for the successful conclusion of its work.

I wish to place on record my appreciation for the cooperation provided by the Government of Israel to the Board, including its facilitation of the repeated entry of the Board into the Gaza Strip and the convening of extensive and substantive meetings with the Board. The Board also appreciated its reception by representatives of the Palestinian Authority and meetings with the local authorities in Gaza.

As with all United Nations boards of inquiry, the Board's report is an internal document and is not for public release. It contains significant amounts of information that was shared with the Board in strict confidence. It also contains a significant body of information, the disclosure of which could prejudice the security or proper conduct of the Organization's operations or activities.

At the same time, I am aware that my decision to establish a Board of Inquiry into some of the incidents that occurred in the Gaza Strip between 27 December 2008 and 19 January 2009 has given rise to considerable interest.

I have accordingly taken the decision to release a summary of the Board's report. A copy of that summary is attached to the present letter.

In order to avoid any possible misunderstanding, I wish to emphasize that this is a summary of the Board's report; it is not the report itself. That report is some 184 pages long and contains footnotes detailing relevant sources and citations, along with some 200 appendices and annexes of relevant evidence, including witness statements, investigative reports, medical reports, photographs, video footage, non-governmental organization submissions, meeting notes and other materials. Consistent with the terms of reference of the Board, the report includes details of persons killed or injured in the incidents; the causes of their deaths and the causes and nature of their injuries; and detailed descriptions of losses of and damage done to the property of the United Nations. Details of repair or replacement costs are annexed to the report, together with memorandums on the valuation methodologies used. This detailed information is not included in the attached summary.

I would also emphasize that this is the Secretariat's summary of the Board's report and that it has not been prepared by the Board itself. It contains a faithful and objective reflection of the Board's full report, including a description of the circumstances related to each of the nine incidents that the Board was tasked to review and investigate, together with a summary of the key findings on the facts and causes of each of those incidents, and on responsibility for them. It also contains a summary of the Board's conclusions. The recommendations are reproduced in full from the report.

I am carefully reviewing these recommendations with a view to determining what courses of action, if any, I should take. I am pleased to report in this connection that the Government of Israel has agreed to meet with United Nations Secretariat officials to address the Board's recommendations, in so far as they relate to Israel.

As for the Board's recommendation number 4, the Government of Israel has already confirmed to me that it is eager to build upon and further improve existing coordination mechanisms with the United Nations to help ensure the safety and

security of United Nations personnel and premises. While there is room for improvement, I wish to note the value of the cooperation between the Government of Israel's Coordination and Liaison Administration and the United Nations, which is crucial to ensuring the provision of basic humanitarian assistance.

As for the Board's recommendations numbers 10 and 11, which relate to matters that largely did not fall within its terms of reference, I do not plan any further inquiry. Regarding recommendation number 10, in which the Board addresses further incidents of death or injury to UNRWA personnel and damage to UNRWA premises that were not within the Board's terms of reference, I intend to address these incidents on a case-by-case basis, where appropriate and through dialogue with the Government of Israel, in so far as such incidents relate to Israel and the United Nations.

The Government of Israel has informed me that it has significant reservations and objections to elements of the attached summary, which has been shared with it and to which it intends to react.

In conclusion, I would like to highlight my deep and abiding concern for the civilians of the Gaza Strip and Israel, and their right to live in peace and security, free from the threat of violence and terrorism. The plight of Palestinian civilians in Gaza is reflected in the report of the Board of Inquiry. We should keep in mind that Israeli civilians in southern Israel faced and continue to face indiscriminate rocket attacks by Hamas and other militant groups. I continue to believe that the well-being and aspirations of both Palestinian and Israeli civilians will best be secured through a successful peace process that achieves the goals of the resolutions adopted by the Council, including its resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), 1850 (2008) and 1860 (2009).

I should be grateful if you would bring the present letter and its attachment to the attention of the members of the Security Council for their information.

(*Signed*) **Ban** Ki-moon

Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009

1. On 11 February 2009, I convened a United Nations Headquarters Board of Inquiry[1] (hereinafter "the Board") to review and investigate the following incidents that occurred in the Gaza Strip between 27 December 2008 and 19 January 2009 and in which death or injuries occurred at, and/or damage was done to, United Nations premises or in which death or injuries occurred, and/or damage was sustained, in the course of United Nations operations:

(a) Injuries occurring at and damage done to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Khan Younis Preparatory "A" Girls School on 29 December 2008 and the subsequent death of the person injured;

(b) Deaths occurring at and damage done to the UNRWA Asma Elementary School in Gaza City on 5 January 2009;

(c) Deaths and injuries occurring at and in the immediate vicinity of, and damage done to, the UNRWA Jabalia Preparatory Boys "C" School on 6 January 2009;

(d) Injuries occurring at and damage done to the UNRWA Bureij Health Centre on 6 January 2009;

(e) Small-arms fire affecting an UNRWA convoy in the Ezbet Abed Rabou area on 8 January 2009 and related damage to a United Nations vehicle;

(f) Injuries occurring at and damage done to the UNRWA Field Office compound in Gaza City on 15 January 2009;

(g) Deaths and injuries occurring at and damage done to the UNRWA Beit Lahia Elementary School on 17 January 2009;

(h) Damage done to the Gaza compound of the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO) on 29 December 2008;

(i) Damage done to the World Food Programme (WFP) Karni Warehouse between 27 December 2008 and 19 January 2009.

2. As set out in its terms of reference, the detailed tasks of the investigation team were as follows:

(a) To gather and review all existing documentation related to the incidents, including the report of the inquiry into incidents affecting United Nations premises that Prime Minister Olmert has promised to the Secretary-General, if available, and any other available report that might result from national and other investigations;

[1] The team was headed by Ian Martin and composed of Larry D. Johnson, Sinha Basnayake and Lieutenant Colonel Patrick Eichenberger as Board members and Nina Lahoud as Secretary of the Board.

(b) To identify and interview all relevant witnesses and others who could help the investigation and make a record of their statements;

(c) To visit the sites where the incidents occurred;

(d) To produce a Headquarters report on the incidents, to include the following:

(i) Findings on the facts of the incidents, including: the full names of deceased and injured persons; dates, times and places of their deaths or injuries; nature of their injuries; the causes of their deaths or injuries; whether those persons who were United Nations personnel were on duty at the time of the incidents; in the case of those persons who were not United Nations personnel, the reason for their presence at or in the immediate vicinity of the scene of the incident; and descriptions of losses of and damage to property of the United Nations and of the deceased and injured persons;

(ii) Findings on the causes of the incidents;

(iii) Findings on the responsibility of any individuals or entities for the incidents;

(iv) Recommendations concerning any action that, in the opinion of the team, should be taken by the United Nations, including any actions or measures that should be taken to avoid a recurrence of the incidents;

(v) Relevant evidence, to be added as appendices and annexes, including photographs, post-mortem reports and so on.

3. The Board noted that it was not within its terms of reference to address the wider aspects of the conflict in Gaza, its causes, or the situation affecting the civilian populations of Gaza and southern Israel in the period before "Operation Cast Lead" was launched. Its task was limited to considering the nine incidents identified in its terms of reference.

4. The Board reached the following conclusions regarding the facts and causes of, and responsibility for, each of those incidents. Complete findings of fact, together with supporting evidence and documentation and the rationale for the conclusions summarized below, are contained in the Board's full report, which was submitted to the Secretary-General in confidence, consistent with standard practice for United Nations Boards of Inquiry.

Incident (a): Injuries occurring at and damage done to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Khan Younis Preparatory "A" Girls School on 29 December 2008 and the subsequent death of the person injured

5. The UNRWA Khan Younis Preparatory "A" Girls School is located about 1 km north-west of the city of Khan Younis. Adjacent to the school is a kindergarten, also operated by UNRWA. The Board noted that the Global Positioning System (GPS) coordinates of the school had previously been communicated to the Israel Defense Forces (IDF) and that the school appeared on a map that had been prepared by the Coordinator of Government Activities in the Territories (COGAT) and shared with the United Nations for the purposes of coordinating United Nations activities with those of the IDF (the "joint coordination map").

6. On 29 December, the school was closed on the occasion of the Islamic New Year. This date fell two days after the commencement of "Operation Cast Lead" and during the Operation's first week, when it consisted exclusively of aerial attacks on Gaza. On the day of the incident, an UNRWA employee was working at the school as a guard. Another UNRWA employee was working as a guard at the adjacent kindergarten.

7. Opposite the school, on the other side of the street, was a civil defence centre housing a fire brigade. Because their centre had received a warning by telephone, the civil defence firefighters feared that the centre might be targeted. They warned the UNRWA guard to leave the school because he could also be targeted, but he decided to stay.

8. At about 3.30 p.m., an explosion occurred. The Board found that the UNRWA guard at the school had been struck by a weapon, or fragments from a munition, outside the gate of the school. He was taken to hospital, where he later died. The Board found that the UNRWA guard at the kindergarten next door had suffered injuries from the same munition. The school had also been damaged.

9. The Board was unable, with the limited information available to it, to reach any conclusions as to the nature or origin of the missile. While finding that the killing of the UNRWA guard was without any justification and clearly wrongful, the Board could not reach a conclusion as to which individuals or entities were responsible.

Incident (b): Deaths occurring at and damage done to the UNRWA Asma Elementary School in Gaza City on 5 January 2009

10. The UNRWA Asma Elementary Co-educational "A" School is situated in the centre of Gaza City. The main school block is a two-storey building containing classrooms and rooms for employees, including small toilets, one for girls and one for boys. The compound contains a playground, a building housing a canteen, and two toilet blocks, one for ladies and one for gentlemen.

11. The school was closed on 27 December 2008 because of the military operations which formed part of "Operation Cast Lead". It was formally opened on 5 January 2009 as a shelter for Palestinians affected by the conflict; however, the fact that the school was being used as an emergency shelter was not notified to the IDF until the morning of 6 January. UNRWA Gaza Field Office records show that 406 people had sought shelter in the school by the night of 5 January. UNRWA procedures required that those seeking shelter be searched, in particular for weapons. The Board noted that there were accounts both that they were so searched, and that they were not searched because they were seen as obviously carrying little or nothing. Those seeking shelter in the school were registered. A shelter identification card was issued to the head of each family seeking shelter. After registration, the family members were allocated classrooms as accommodation. The shelter manager tried to keep families together as much as possible. Three young men, aged 25, 24 and 19, together with other members of their extended family, were allocated a room on the second floor.

12. During the evening of 5 January, an UNRWA guard was positioned at the doors between the inside and outside compounds of the school. According to the information that he provided, at approximately 11 p.m., he allowed the mother of

one of the young men and a young man of the family through the doors to use the outside bathroom. After they returned, he allowed three young men through to use the bathroom.

13. At approximately 11.15 p.m., a missile struck within the school compound close to the toilet blocks. It killed the three young men who had left the school building just minutes before. It also caused damage to the school premises. The Board found that the missile was fired from the air by the IDF.

14. The Board considered the possibility that the three young men were engaged, or about to engage, in military activity. It concluded that, on balance, it was more probable that they were going out to use the toilets in the school compound as they normally would, and were not preparing to engage in military activity. In this connection, the Board noted that no weapons or ammunition were found on the premises and that, on a balance of probability, it was difficult to accept that a weapon was smuggled into the compound before the incident and out of the compound afterwards.

15. As to whether the IDF would have known that the school was functioning as a centre for civilians, the Board noted that, on the day of the attack, the IDF had dropped 300,000 warning leaflets and, by this and other means, had urged civilians to move to city centres. It also noted that several hundred Palestinians had been gathering at the Asma School seeking shelter since the day prior to the incident, and from noon had been queuing in the playground to register and were thus easily visible to aerial monitoring.

16. The Board concluded that the IDF carried out a direct and intentional strike on United Nations premises. It considered that this amounted to an egregious breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. The Board found that the Government of Israel was therefore responsible for the deaths of the three young men who were sheltering in the school and for the damage to the premises caused by its actions.

17. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel and civilians sheltering on United Nations premises and to protect United Nations premises and property.

Incident (c): Deaths and injuries occurring at and in the immediate vicinity of, and damage done to, the UNRWA Jabalia Preparatory Boys "C" School on 6 January 2009

18. The UNRWA Jabalia Preparatory Boys "C" School serves children who are transitioning from primary to secondary education, and is also known as the Al-Fakhoura School, after the name of the neighbourhood. The school is in a three-storey building, within a compound enclosed by a wall approximately three metres high, and is entered through a gate of similar height. The western side of the school is bordered by the Al-Fakhoura road, which is broad enough at one section adjacent to the school that a traffic island has formed, where people sometimes gather and where a fruit and vegetable stall was set up on the day of the incident.

19. The Board noted that the GPS coordinates of the Jabalia School had been previously communicated to the IDF through regular updates and that the school appeared on the Joint Coordination Map prepared and shared by COGAT. It also noted that the school was included on the list of 91 provisional shelters that had been communicated to the IDF prior to "Operation Cast Lead". It was opened as a shelter for civilians on 5 January 2009.

20. The Board found that, in the mid-afternoon of 6 January 2009, a series of mortar shells struck the immediate vicinity of the UNRWA Jabalia School, causing injuries to seven persons inside the school — six shelter residents and an UNRWA guard. The Board stated that it was unable to carry out the extensive investigations necessary to reach firm conclusions about the number of persons killed and injured in the immediate vicinity of the school. It noted that the Office for the Coordination of Humanitarian Affairs and local human rights organizations had estimated the number of dead at between 30 and 40, and the number of injured at 50. It found that one of those killed outside the school was a 14-year-old boy who had taken shelter in the school with his family, and was outside the school gates when killed.

21. The Board found that the undisputed cause of the injuries to the UNRWA guard and the people who had taken shelter in the UNRWA Jabalia School, of the damage to the school, and of the deaths and injuries to persons in the immediate vicinity of the school, was the firing of 120 mm mortar rounds by the IDF that landed on the road outside the school and at the compound of a family home nearby.

22. The Board noted that, in public statements and press reports at the time of incident, the Israeli authorities stated that the IDF had been responding to mortar fire from within the UNRWA school and that the school had been booby-trapped with explosives. It also noted that the allegation of Hamas mortar fire from within the UNRWA school compound was still posted on the website of the Ministry of Foreign Affairs of Israel at the time of the drafting of the Board's report. The Board found that there was no firing from within the compound and no explosives in the school.

23. The Board further noted that, according to some statements issued following the incident, the IDF had responded to mortar fire from the immediate vicinity of the school. The Board stated that it was unable to reach any conclusion as to whether or not mortars were being fired and directed against the IDF from near to the school. However, it noted that the majority of witness statements received by or presented to the Board stated that this was not the case.

24. The Board noted that the means of response to an identified source of mortar fire that would have carried the least risk to civilians and property, including the UNRWA school, would have been a precisely targeted missile strike. It was not in a position to assess whether such a means of response was available to the IDF at the time and, if it was not, the length and consequences of any delay until it might have become available.

25. The Board found that, in firing 120 mm high explosive mortar rounds, the IDF had not maintained an adequate safety distance between whatever its target point might have been and the school. The Board found that one shell had hit only 20 metres from the school and the resulting shrapnel had caused injury to persons inside the school compound. It also noted that, even if the safety distance from the

school had been adequate, that would not have addressed the issue of the deaths and injuries that were caused in the immediate vicinity of the school.

26. The Board concluded that the IDF had breached the inviolability of United Nations premises and had failed to respect the immunity of the Organization's property and assets from interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. The Board therefore found the Government of Israel responsible for the injuries to members of the families sheltering in the school and for the damage to UNRWA premises and property caused by its actions.

27. Moreover, the Board found that the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel and civilians sheltering on United Nations premises and to protect United Nations premises and property.

28. With respect to civilians outside the school, including children and women, the Board noted that the responsibilities of the parties to the conflict were to be assessed in accordance with the rules and principles of international humanitarian law. It stated that the number of such deaths, the number and nature of injuries and the extent to which they could be categorized as acting in a non-civilian capacity could not be adequately investigated within the Board's constraints.

Incident (d): Injuries occurring at and damage done to the UNRWA Bureij Health Centre on 6 January 2009

29. The UNRWA Bureij Health Centre is a facility consisting of a single-storey building located in the centre of the Bureij Camp in Gaza. The Board noted that the GPS coordinates of the Centre had been previously communicated to the IDF through regular updates and that the Centre appeared on the Joint Coordination Map prepared and shared by COGAT.

30. The Centre does not have resident patients, but provides primary health care to visitors (outpatients). On 6 January 2009, the date that the Centre was damaged and its personnel and patients injured, the Board noted that 40 employees had reported for duty and that there were approximately 600 patient consultations.

31. The Centre is located in a populated urban area. Across the access road to the Centre stood a four-storey apartment building. The Board noted that the distance separating the Centre from that apartment building was approximately 20 metres. It found that on 6 January at about 10.40 a.m., the apartment building was hit by a small missile. The missile caused no injury to any person and physical damage only within a restricted area. The UNRWA head doctor at the Centre informed the Board that he thought that this might be a "warning missile", which might be followed by a much more destructive and dangerous strike, and that he therefore ordered his staff to ask patients to remain inside the Centre building, and not outside. However, he was unable to stop new patients from arriving at the Centre. The Board observed that the occupants of the apartment building appeared to have interpreted the strike similarly and had vacated the building, because it did not hear of any deaths of, or injuries to, the occupants as a result of the strike.

32. The Board found that, about 10 minutes later, a powerful aerial bomb hit the apartment building, rendering it a shell. The building did not collapse into the street or against the adjacent buildings, but the explosion did cause debris and shrapnel to

be thrown on to the Centre building and into the Centre compound, causing damage to the building and to the Centre's vehicle parked there.

33. The Board found that, as a result, nine Centre employees suffered personal injuries, while three patients who were approaching or entering the Centre's gate also suffered extensive personal injuries, one of whom later died as a result.

34. The Board found that the undisputed cause of the injuries to UNRWA personnel in the Centre, of the death and injuries to patients present at the Centre, and of the damage to the Centre and its vehicle, was a precision aerial bomb dropped by the IDF on the apartment building opposite the Centre.

35. The Board noted that, while it had received information that some occupants of that apartment building had Hamas affiliations, it did not consider that the information it had received as a whole had enabled it to reach a conclusion as to whether or not the building was being used by Hamas for operational purposes.

36. As regards the small missile used on the building by the IDF as a warning, the Board noted that it was fortunate that the head doctor at the Centre realized that this might be the precursor to a very destructive strike, which might even affect the Centre, and that he therefore ordered his staff to ask the patients to remain inside the Centre building. It noted that, nonetheless, a number of Centre employees inside were injured by the effects of the strike. The Board observed that the light missile, even coupled with the doctor's order, was therefore insufficient as a warning to guard against injury to the occupants of the Centre. Moreover, the Board observed that it could not help UNRWA to protect the Centre building and the vehicle, both of which suffered damage from the main strike.

37. The Board noted that no specific advance warning was given to UNRWA, even though the IDF would have known in advance that it was planning a future military operation in proximity to the Centre. The Board observed that sufficient advance warning would have enabled UNRWA to take the necessary protective measures to ensure the security and safety of UNRWA employees on the premises and of patients present at the Centre, as well as the safety of the UNRWA vehicle in the compound, and that it might also possibly have enabled UNRWA to mitigate the damage to the building itself. The Board therefore found that the IDF had failed to take sufficient precautionary measures in relation to the Centre.

38. The Board concluded that there had been a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. It found that the Government of Israel was therefore responsible for the deaths and injuries caused to patients present at the Centre and for the injuries to UNRWA personnel, as well as for the damage caused to UNRWA vehicles and property caused by its actions.

39. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel and civilians present at the Bureij Health Centre and to protect United Nations premises and property.

Incident (e): Small-arms fire affecting an UNRWA convoy in the Ezbet Abed Rabou area on 8 January 2009 and related damage to a United Nations vehicle

40. Around 5 January 2009, an UNRWA Field Procurement and Logistics Officer became aware of the death of one of her staff and learned that his family were not in a position to retrieve his body. A decision was accordingly made that UNRWA should try to retrieve the body of its staff member for burial by his family. This would necessitate the dispatch of a convoy through the Ezbet Abed Rabou area, which was by that time occupied by the IDF. It would therefore be necessary to coordinate the recovery operation with the IDF, through its Coordination and Liaison Administration (CLA), to ensure a safe route and time for travel. The UNRWA Field Procurement and Logistics Officer concerned routinely coordinated the entry of trucks into Gaza with the IDF. Although another United Nations official routinely coordinated the movements of United Nations staff, his usual counterparts in the CLA were the same as those with whom the Procurement and Logistics Officer routinely dealt. She accordingly contacted one of her regular counterparts in the CLA and provided him with the necessary details and was given a "go-ahead" for a specific date and time. The CLA gave instructions not to take a particular road.

41. The Board found that the convoy left the UNRWA Gaza Field Office on the afternoon of 8 January 2009. It consisted of three vehicles — a leading car, carrying United Nations personnel and flying a United Nations flag, a Ministry of Health ambulance and another car, also containing United Nations staff. The convoy avoided taking the road mentioned by the CLA. The UNRWA Field Procurement and Logistics Officer who was in the lead car informed the Board that seven or eight rounds of small-arms fire were directed towards the lead car. The Board found that the car was hit three times, but that no injuries were sustained. The front car stopped and the firing ceased. Following an abortive attempt to contact the CLA, a decision was taken that the convoy should return to the UNRWA Field Office compound, which it did without further incident.

42. The Board noted that, as a result of that and other previous incidents, UNRWA announced on 9 January 2009 a temporary suspension of all movements of personnel throughout the Gaza Strip due to a breakdown in the effectiveness of coordination mechanisms between UNRWA and the Israeli authorities. The Board observed that this suspension affected UNRWA humanitarian operations. Later that day, at a high-level meeting, the United Nations received credible assurances that the security of United Nations personnel, installations and humanitarian operations would be fully respected and that there would be undertakings for improved liaison and more effective internal coordination within the IDF. The United Nations subsequently resumed movements of its personnel.

43. The Board concluded that the firing came from the IDF and was intended as a warning. It found that the UNRWA Field Procurement and Logistics Officer who initiated the coordination of the convoy did not commit any error in coordination procedures or in her interface with the CLA. It further found that the firing occurred as a result of failure of communication within the IDF, specifically between the CLA and forces on the ground.

44. The Board concluded that there was a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such immunity could not be overridden by demands of military expediency. It found that

the Government of Israel was therefore responsible for the damage to United Nations property and assets caused by its actions.

45. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel and other civilians travelling as part of the convoy and to protect United Nations property.

Incident (f): Injuries occurring at, and damage done to, the UNRWA Field Office compound in Gaza City on 15 January 2009

46. The UNRWA Field Office compound houses the UNRWA Gaza headquarters, including the Office of the Commissioner-General, as well as the Field Office for the Gaza Strip. It is the hub and nerve centre for all UNRWA operations in Gaza, with administrative offices, fuel storage facilities, and warehouses for food, medicines, blankets and other provisions for humanitarian assistance. It is situated in a residential area. The Board noted that the GPS coordinates of the compound had been previously communicated to the IDF by the United Nations and that the compound appeared on the joint coordination map prepared by COGAT.

47. The ground war phase of "Operation Cast Lead" began on 3 January 2009. It involved incursions by IDF forces deep into areas of the Gaza Strip. By the evening of 14 January, these incursions had reached the southern suburbs of Gaza City. UNRWA staff told the Board that the shelling drew closer and closer to the compound during the night of 14 January and that, by the morning of 15 January 2009, shells were landing nearby and showering the compound with dust and concrete. UNRWA senior management and staff were greatly concerned, as the compound contained some 170,000 litres of diesel in underground storage tanks. Eight fuel tankers, three of which were full, were also parked there. As artillery fire increased, UNRWA let into the compound about 600 to 700 civilians seeking shelter, all of whom were searched and kept in one area by UNRWA staff. Buildings next to the compound were struck by artillery, and the first direct hits on the compound, including the training centre and parking lot, occurred at about 7.45 a.m. Fires and smoke began erupting throughout the compound, including the parking lot and the warehouse. United Nations international staff contacted their IDF and Israeli counterparts repeatedly, asking them to stop the firing at and near the compound. Assurances were given by the IDF in response, but the Board found that those were ineffective and not matched by action on the ground for a period of more than two hours.

48. At 9.45 a.m., two UNRWA staff became aware of burning white phosphorous-impregnated wedges under a fuel truck and scattered on the ground around the warehouse and fuel tank area. Despite incoming artillery shells, they went out into the compound and attempted to put out the fire under the fuel tanker. They were unable to do so, but succeeded in moving the burning fragment from underneath it. Although greatly concerned about the fuel tankers, UNRWA staff decided that any efforts to move the tankers to a safer place would have to wait until after incoming fire had stopped. Sometime between 12 p.m. and 12.30 p.m., UNRWA staff managed to move the fuel tankers and some other vehicles from the compound. However, fires had spread throughout the compound in the course of the afternoon. As the UNRWA rooftop water tanks had been smashed by incoming shell fire sometime earlier the same day, there was no water available. Staff told the Board that, when

the fire engulfed the vehicle repair workshop, with its highly flammable contents, it was impossible to prevent the fire from spreading to the warehouse area, which held medicines, food, general supplies and blankets.

49. The Board noted that, on the day of the incident, press reports carried statements to the effect that Government of Israel officials claimed that Palestinian elements had fired from the UNRWA compound, including anti-tank weapons, and that the IDF had responded. The Board stressed that UNRWA staff stated that they heard no gunfire from within the compound or in the immediate vicinity on the morning of 15 January 2009 and did not see or hear anything that might have suggested the presence of militants within the compound. The Board went on to confirm that there was no evidence whatsoever that any military activity against the IDF originated from within the compound.

50. The Board found that the artillery firing by the IDF caused three 155 mm M107 High-Explosive artillery shells to explode within the UNRWA Field Office compound. It also found that that same firing caused at least eight shell casings from 155 mm M825A1 smoke projectiles containing white phosphorus, together with a large number of burning white phosphorus-impregnated wedges, to fall within the compound, specifically on to the warehouse area.[2]

51. The Board found that this artillery firing by the IDF caused injuries to one UNRWA employee and to two unidentified persons who had taken shelter in the compound. Specifically, the Board found that these three persons were injured by shrapnel from one of the high explosive shells that landed in the compound.

52. The Board also found that very substantial damage was caused to buildings, vehicles and supplies, both from the direct impact of the shelling and from the resulting conflagration. That conflagration consumed entire warehouses and buildings containing food, medicines and other goods essential for the delivery of humanitarian assistance by UNRWA to the people of Gaza. UNRWA humanitarian operations in Gaza suffered significant adverse effects as a result.

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[2] The Board made the following technical findings with respect to these projectiles. Such projectiles are intended to be used to create a smokescreen, impeding visibility between the forces employing them and enemy forces. Each projectile consists of its main body (the shell casing) and a cylindrical carrier canister containing 116 felt wedges, impregnated/saturated with white phosphorous. The projectile is set to base-eject the canister, normally at between 100 and 400 metres above the ground. This releases the wedges, which ignite upon air contact, producing smoke. The burning wedges fall to the ground, taking 3 to 10 seconds, in an elliptical pattern spread over a surface of about 100 to 150 metres. Each felt wedge is 190 mm thick, and continues to burn for 5 to 10 minutes once on the ground. The total weight of white phosphorous in the wedges in each projectile is 5.78 kg. The shell casing, projectile base, metal ribs and other parts fall to the ground. The total weight of each projectile is about 46 kg.

The Board went on to observe that the International Committee of the Red Cross states that, "if used against military targets in or near populated areas, weapons containing this substance [sc. white phosphorous] must be used with extreme caution to prevent civilian casualties". White phosphorous burns at over 800 degrees Celsius (about 1,500 degrees Fahrenheit) and that burning will continue until the phosphorous has been completely depleted or until it is no longer exposed to oxygen. Human health, the Board noted, can be adversely affected in several ways: by burn injuries, inhalation of smoke from burning white phosphorous, oral exposure, or the persistence of white phosphorous particles in the environment. The Board noted that death or serious injuries could also be caused by the falling shell casing, weighing up to 15 kg, and other metal components or fragments of the projectile; and that, while such projectiles are not intended as incendiary weapons, they can obviously have serious incendiary effects.

53. The Board found that many deaths and injuries and further destruction could have been caused, had it not been for the prompt and courageous action of two UNRWA personnel.

54. The Board concluded that there was a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. The Board found that the Government of Israel was therefore responsible for the injuries suffered and the very substantial damage done to UNRWA property and assets caused by its actions.

55. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil its responsibilities to protect United Nations civilians and civilian objects on United Nations premises. The Board considered that the IDF had a particularly high degree of responsibility to take effective precautions to ensure the safety of UNRWA premises, which were the centre of United Nations humanitarian action in Gaza, as well as of United Nations personnel and civilians sheltering there.

56. The Board found that any precautions that were taken by the IDF were clearly inadequate, in view of the firing of high-explosive shells into the compound and the firing of projectiles containing white phosphorus-impregnated wedges above the compound, exposing United Nations premises and personnel to the impact of heavy metal shell casings and to the incendiary effect of burning wedges, which placed the lives of those in the compound at risk, and could have ignited fuel in underground storage tanks and in three fuel tankers parked in the compound. It concluded that, given all the circumstances, the firing by the IDF of artillery with high explosives and projectiles containing white phosphorous into, over or in such close proximity to UNRWA headquarters as to cause injuries to persons and very substantial damage to property was grossly negligent and amounted to recklessness.

Incident (g): Deaths and injuries occurring at and damage done to the UNRWA Beit Lahia Elementary School on 17 January 2009

57. The UNRWA Beit Lahia Elementary School is a three-storey building constructed around a central courtyard. It is situated within a compound enclosed by a wall approximately three metres high, with an equally high metal gate. The Board noted that the GPS coordinates of the school had been communicated to the IDF and that the school had appeared on the joint coordination map prepared by COGAT and was also included on the list of 91 provisional shelters that had been communicated to the IDF prior to "Operation Cast Lead".

58. On 5 January 2009, UNRWA opened the school as a shelter, and the IDF was informed accordingly. Guards were stationed at the shelter at all times, including at least one at the gate. The Board noted that the guard at the gate would check all people entering the school to make sure that no weapons were brought in. The Board further noted that people entering the school were registered and that by 16 January, according to UNRWA records, 1,891 people were sheltering in the school, including 265 children under the age of 3.

59. The Board found that, on 17 January at approximately 6.40 a.m., two ordnance rounds exploded above the school, dispersing dozens of burning white phosphorus-

impregnated felt wedges into the air over the compound and down on to the school itself. One shell casing struck the school compound wall, and another landed about 20 metres outside the school. The shelter manager ordered people to evacuate the school and to seek refuge at the Kamal Radwan Hospital or in nearby homes.

60. A few minutes later, the Board found, an ordnance shell casing crashed through the roof of the school building, and another hit the outer edge of the open-air corridor linking the classrooms on the top floor. The Board found that the shards from one of those two shell casings, as well as building debris, entered a classroom where many people were still taking shelter, and two young children, aged 5 and 7, were killed and their mother and cousin seriously injured.

61. The Board found that, about five minutes later, another ordnance round exploded above the school, followed two to three minutes later by a further round, both dispersing dozens of burning fragments that fell on the school compound and on the people fleeing the classrooms. Some of the burning white phosphorus wedges set fire to a classroom. The fire was put out before it could spread. The white phosphorus wedges continued to burn on the ground in the school compound for several minutes, releasing a white smoke that later would be determined by doctors to be the cause of some of the injuries among the victims. Some staff at the school tried to put out the fires with water, creating noxious fumes which could themselves cause long-term harm to health. Professional first responders began pouring sand on the white phosphorus.

62. The Board found that two children were killed in the incident and a total of 13 people were injured — some very seriously, others less so. Damage was also caused to the school building.

63. The Board found that the undisputed cause of the deaths, injuries and damage was artillery firing by the IDF, specifically the firing of 155-mm M825A1 smoke projectiles containing white phosphorous-impregnated felt wedges. The two deaths and some of the injuries were caused by the impact of shrapnel from the casings of those projectiles. Other injuries were caused by contact with burning fragments or shards of shell casing, yet others by inhalation of the fumes of burning white phosphorous. Damage to the premises was caused by the impact of the shell casings. Burning white phosphorus-impregnated wedges falling within the school compound set fire to a classroom and caused other damage.

64. The Board stated that it was not in a position to make any finding as to whether Hamas units were present in the Beit Lahia neighbourhood on the morning of 17 January 2009, whether IDF forces were exposed to fire or whether the laying of a smokescreen or other reactive measures were necessary in consequence. It found that, in view of what happened, any buffer zone that was being applied around the school in connection with the use of M825A1 shells was obviously ineffective. It further found that any precautions that were being taken to ensure that the white phosphorous-impregnated wedges from those shells burned up before reaching the ground were also clearly inadequate.

65. The Board concluded that there was a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. The Board found that the Government of Israel was therefore responsible for the deaths and

injuries caused to members of the families sheltering in the school and for damage to UNRWA premises and property caused by its actions.

66. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil its responsibilities to protect United Nations personnel and civilians sheltering within United Nations premises and to protect United Nations premises and property.

67. The Board described the potential consequences that could arise from the use of munitions of the type that were used. It stated that those risks and dangers must have already been apparent to the IDF, following the incident at the UNRWA Gaza Field Office compound just two days earlier. The Board concluded that, whatever precautions were taken by the IDF in the current case, they were clearly inadequate in relation to the use of an extremely dangerous substance in a populated urban area. It found that United Nations premises, then in use as a shelter housing families, including small children, were exposed to the fatal impact of heavy metal shell casings and to burning white phosphorus-impregnated wedges. The Board concluded that, given all the circumstances, the firing by the IDF of projectiles containing white phosphorus in such close proximity to the school as to cause the death of two young children and serious injuries to others, as well as property damage, was highly negligent and amounted to a reckless disregard for the lives and safety of those sheltering in the school.

Incident (h): Damage done to the Gaza compound of the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO) on 29 December 2008

68. The UNSCO compound in Gaza is located in the centre of Gaza City. It serves as the Gaza headquarters for the Special Coordinator in the implementation of his political and humanitarian coordination mandate. The offices of the Office for the Coordination of Humanitarian Affairs and the Food and Agriculture Organization of the United Nations in Gaza were co-located within the compound at the time of the incident. There is a bomb shelter — essentially a metal container office with reinforced concrete and steel roofing and sides — at the southernmost end of the compound. The bunker does not contain toilets and is not equipped as a living space. The rooftops of the buildings in the compound have the letters "UN" written on them in very large black writing on a white background. At the time of the incident, 10 vehicles belonging to UNSCO and the Office for the Coordination of Humanitarian Affairs were in the compound's car park, all painted white and with clear United Nations markings.

69. Along the entire length of its easternmost side, the UNSCO compound is bordered by the compound of the Presidential Guest House. The two compounds are separated by a chain link fence. The actual buildings of the Presidential Guest House were approximately 30 metres from the chain link fence.

70. The Board noted that the GPS coordinates of the UNSCO compound had been previously communicated to the IDF through regular updates and that the compound appeared on the joint coordination map prepared and shared by COGAT.

71. The Board found that, at the time of the incident, one UNSCO policy officer, acting as Officer-in-Charge of the Gaza office, and three UNSCO security guards were in the UNSCO compound. On the instruction of the Officer-in-Charge, the

guards were staying in the bomb shelter. The Officer-in-Charge was in the main building. At about 1.25 a.m. on 29 December, the guards completed a tour of the compound. At about 1.35 a.m., less than a minute after one guard had returned to the bomb shelter, there was a huge explosion. Between 5 and 10 minutes later, the four UNSCO personnel heard a second, even louder explosion and again heard rubble falling on the roofs of the buildings and the vehicles in the car park.

72. The Board found that the undisputed cause of the incident was aerial bombing by the IDF of the adjacent Presidential Guest House building. The Board found that there were no direct hits on the UNSCO compound. However, the Board found that the strike on the adjacent building caused large quantities of shrapnel or concrete debris to fly into the UNSCO compound, leading to substantial physical damage to the premises and to United Nations vehicles parked in the compound and risking death or injury to any United Nations personnel who might have been on duty within the compound at the time. The Board observed that the foresight of the Officer-in-Charge and the three guards themselves, and the existence of a bunker, were instrumental in ensuring that there were no deaths or injuries.

73. The Board considered whether Hamas might have been using the Presidential Guest House as a command and control centre or as a munitions store. The Board stated that it was unable to reach any conclusion in that regard, though it noted that UNSCO personnel had no reason to believe that it was.

74. The Board considered that the IDF's general warnings to civilians to keep away from facilities used by Hamas did not serve as a warning to the United Nations that the Presidential Guest House might be a target and that the UNSCO building might be at risk from collateral damage. Indeed, the Board observed, the general warnings involved instructions to the population to move to city centres, including therefore the area of the UNSCO premises, such that UNSCO personnel considered the premises to be safe. The Board considered that the IDF could have given a specific warning to UNSCO of the impending attack. That, it said, would have decreased the risks of death or injury to United Nations personnel and possibly made it possible to mitigate or avoid some of the damage, in particular to the vehicles. The Board believed that any risk that such a warning would have jeopardized the goal of the IDF operation was not high.

75. The Board concluded that there was a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. The Board found that the Government of Israel was therefore responsible for the substantial damage to United Nations premises and property, including vehicles, caused by its actions.

76. The Board found, moreover, that the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel within UNSCO premises and to protect United Nations premises and property.

Incident (i): Damage done to the World Food Programme (WFP) Karni Warehouse between 27 December 2008 and 19 January 2009

77. The warehouses in the Karni industrial zone are located some 200 metres from a barrier marking the eastern edge of the Gaza Strip and are guarded by the IDF. They were built to provide temporary storage facilities close to the Karni crossing and are the only cargo terminal designed for the passage of large containers into the Gaza Strip.

78. Once the crossing point was closed by the Israeli authorities to regular traffic in 2007, several United Nations entities, including UNRWA and WFP, rented warehouses at the Karni facility for stocking foodstuffs and other goods prior to their distribution within Gaza. At the time of the incident, the WFP warehouse contained 400 tons of food commodities, such as oil, tuna, sugar, maize and wheat flour, among other goods.

79. The Board observed that, from the start of "Operation Cast Lead" on 27 December 2008, the security situation made it impossible for WFP personnel to reach the warehouse, and, as a result, there were no United Nations personnel present at the warehouse from that date onward. Food stocks at the warehouse remained inaccessible from the beginning of the Operation until 5 February.

80. WFP informed the Board that its personnel were first able to return to the warehouse on 22 January. They determined that the warehouse had been damaged by small-arms fire and what they thought was probably a rocket or a mortar round, fragments of which were on the warehouse floor. They noted the following damage: a large hole in the roof; partial flooding from rain; damage to the walls and windows, probably caused by small-arms fire or the rocket or mortar; damage to numerous windows; damage to the drainage system; damage to the electrical distribution system (there was no electrical supply to the warehouse at the time); and damage to food items stored in the warehouse. Concerned that there might be unexploded ordnance on the premises, the following day WFP declared the warehouse off-limits to its personnel.

81. In the absence of any employees at the warehouse during the conflict, or any witnesses in what was a largely industrial zone, the Board was unable to determine when the warehouse was hit by ordnance.

82. Having inspected the site, the Board concluded that some of the holes in the walls could have been caused by small-arms fire, but it was impossible to confirm when or its source. The Board found that the bulk of the damage done to the WFP Karni Warehouse and its contents was caused by a Qassam-type, not industrially manufactured, rocket, which had most likely been fired from inside Gaza by Hamas or another Palestinian faction and which had hit the warehouse at some point during "Operation Cast Lead".

83. The Board found that there was a breach of the inviolability of United Nations premises and a failure to accord the property and assets of the Organization immunity from any form of interference. It noted that such inviolability and immunity could not be overridden by demands of military expediency. It concluded that Hamas or another Palestinian actor was therefore responsible for the damage caused by its actions to the WFP Karni Warehouse and the goods stored within it.

84. The Board went on to state that it considered that the military actor that fired the rocket, whether Hamas or another Palestinian faction, had a responsibility to respect the rules and principles of international humanitarian law in carrying out the military action that caused damage to the WFP Karni Warehouse. In that regard, the Board noted that the not industrially manufactured rockets used by Hamas, such as the rocket the remains of which were found in the warehouse, were indiscriminate weapons. It also found that, when such rockets were fired from Gaza, their use implied a willingness or intention to cause loss of civilian life, injury to civilians and damage to civilian objects in Israel, and that they also carried significant risks of incidental loss of civilian life, injury to civilians and damage to civilian objects in Gaza itself.

Conclusions and recommendations

85. The Board noted that it was required by its terms of reference to gather and review all existing documentation related to the nine incidents specified and that, as with other boards of inquiry, its report should include findings on the facts of those incidents, on the causes of those incidents and on the responsibility of any individuals or entities for those incidents, and recommendations concerning any action that, in the opinion of the Board, should be taken by the United Nations, including any actions or measures that should be taken to avoid the recurrence of the incidents.

86. A summary of the Board's specific findings of fact, cause and responsibility with respect to each incident is set out above.

87. As emerges from these summaries, in six of the nine incidents, the Board concluded that the death, injuries and damage involved were caused by military actions, using munitions launched or dropped from the air or fired from the ground by the IDF. Thus:

- In the case of the **UNRWA Asma School**, the Board found that the undisputed cause was a single missile strike from the air by the IDF. It found that this caused the deaths of three young men who were members of the families sheltering in the school, as well as damage to the school premises.
- In the case of the **UNRWA Jabalia School**, the Board found that the undisputed cause was the firing of heavy mortar rounds by the IDF. It found that those mortar rounds landed outside the school, causing injuries to seven members of the families sheltering in the school, as well as damage to the school premises. It found that they also caused the deaths of, and injuries to, many persons in the immediate vicinity of the school, including women and children, one of whom was a 14-year old child whose family had taken shelter inside the school.
- In the case of the **UNRWA Bureij Health Centre**, the Board found that the undisputed cause was an aerial bomb dropped by the IDF on a building opposite the Centre. It found that the explosion caused the death of one patient and serious injuries to two other patients who were present at the Centre and that it also caused injuries to nine UNRWA personnel, as well as damage to the premises and to an UNRWA vehicle.

- In the case of the **UNRWA Field Office compound**, the Board found that the undisputed cause was artillery firing by the IDF. It found that the firing caused three high-explosive shells to explode within the compound and at least eight shell casings from projectiles containing white phosphorus, together with a large number of burning white phosphorus-impregnated wedges, to fall within the compound. It found that the firing caused injuries to one UNRWA employee and to two persons who had taken shelter in the compound. It also caused very substantial damage, the Board found, to buildings, vehicles and supplies, both from direct impact and from the resulting conflagration. UNRWA humanitarian operations in Gaza were adversely affected as a result. The Board observed that, had it not been for the prompt and courageous action of two UNRWA personnel, many deaths and injuries could have been caused, along with further destruction of the UNRWA headquarters and operational centre in Gaza.

- In the case of the **UNRWA Beit Lahia School**, the Board found that the undisputed cause was artillery firing by the IDF. It found that this firing caused two shell casings to fall on to the school, causing the deaths of two children, as well as very serious and less serious injuries to members of the families who had taken shelter in the compound. It found that the firing also caused a large number of burning white phosphorus-impregnated wedges to fall within the school compound, setting fire to a classroom and causing further damage to the school premises.

- In the case of the **UNSCO compound**, the Board found that the undisputed cause was the aerial bombing by the IDF of the Presidential Guest House building adjacent to the compound. It found that this caused substantial damage to United Nations premises and to United Nations vehicles in the compound, and risked causing death or injury to United Nations personnel on duty at the time.

88. In one further incident, the Board concluded that damage to a United Nations vehicle was caused by firing by the IDF:

- In the case of the **UNRWA convoy** in the Ezbet Abed Rabou area, the Board concluded that the incident involved small-arms fire coming from the IDF, inte ded as a warning, as a result of a failure of communication within the IDF. The Board found that the firing caused damage to an UNRWA vehicle, which was carrying international and national United Nations personnel. The incident contributed to the temporary suspension by UNRWA of staff movements in Gaza, affecting its humanitarian operations, the Board found.

89. In one incident, the Board concluded that damage to United Nations premises was caused by a Palestinian faction, most likely Hamas:

- In the case of the **WFP Karni Warehouse**, the Board concluded that the most serious damage sustained was caused by a rocket fired by a Palestinian faction, most likely Hamas, which was intended to strike in Israel but which fell short.

90. In one incident, the Board was unable to reach any conclusions as to the cause:

- In the case of the **UNRWA Khan Younis School**, the Board stated that it was unable, with the limited information available, to reach conclusions as to the

source of the munitions that caused the death of one UNRWA employee, injury to another and damage to the school premises.

91. The Board recalled that United Nations premises were inviolable. That inviolability, it noted, could not be set aside by any Member State on the grounds that, in the special circumstances of hostilities, it must be qualified or overridden by demands of military expediency. The Board also recalled that the property and assets of the United Nations were immune from any form of interference and that that immunity also could not be overridden by such demands.

92. The Board further observed that United Nations personnel and all civilians within United Nations premises, as well as civilians in the immediate vicinity of those premises and elsewhere, were to be protected in accordance with the rules and principles of international humanitarian law.

93. Against that background, the Board found that the Government of Israel was responsible for the deaths and injuries that occurred within United Nations premises and the physical damage that was done to United Nations premises and property in incidents (b), (c), (d), (e), (f), (g) and (h) — the UNRWA Asma School, the UNRWA Jabalia School, the UNRWA Bureij Health Centre, the UNRWA convoy, the UNRWA Gaza Field Office compound, the UNRWA Beit Lahia School and the UNSCO Gaza compound.

94. The Board found that, in those seven incidents, UNRWA sustained losses of and damage to property with a total estimated repair and replacement cost of more than $10.4 million, while UNSCO incurred losses of and damage to property with an estimated total repair and replacement cost in excess of three quarters of a million dollars.

95. The Board further found that the Palestinian faction that launched the rocket involved, most likely Hamas, was responsible for physical damage to the premises in incident (i) — the WFP Karni Warehouse. The Board noted that, at the time of its report, the assessment of losses and damage sustained in that incident was not yet fully complete, but that the estimated repair and replacement costs were some $29,000.

96. The Board stated that it was unable to make a finding of responsibility for the death, injury and physical damage in incident (a) — the UNRWA Khan Younis School.

97. The Board stated that it was not within its scope to assess general allegations or denials regarding the manner in which military activity was conducted during "Operation Cast Lead". The Board concluded, though, that no military activity was carried out from within United Nations premises in any of the incidents. In its assessments of each incident, the Board referred to the witness statements and other information given to it regarding possible military activity close to United Nations premises and possible military use of nearby buildings, but the Board noted that it was not within its scope or capacity to reach conclusions on those matters.

98. In its conclusions, the Board made a number of observations regarding steps that might have been taken to minimize risks for civilians and civilian objects.

99. The Board noted that, according to the Ministry of Foreign Affairs of Israel, 980,000 leaflets were dropped over Gaza during the first nine days of the conflict; in addition, there were radio broadcasts and thousands of telephone calls. The Board

observed that giving effective advance warning, unless circumstances did not permit, of attacks that might affect the civilian population contributed to discharging the obligation to protect civilians against dangers arising from military operations. However, it noted that the ability of civilians in Gaza to respond to those warnings by moving to safety was greatly limited. Warnings stated that the IDF "will hit and destroy any building or site containing ammunition and weapons", but in many cases, the Board remarked, civilians could not be expected to be aware that particular buildings were in fact used for such purposes or that the IDF might believe them to be so used. Although it was reported that a specific warning was often issued to civilians living in proximity to a military target, the Board noted that no such warnings were given to the United Nations before attacks on targets in close proximity to United Nations premises. The Board stated that it believed that this could have and should have been done, most obviously in the cases of incidents (d) and (h) — the Bureij Health Centre and the UNSCO Gaza compound.

100. The Board noted further that most warnings did not make any reference to when a particular area would be attacked or were not specific to a location at all, stating simply the intent to "act against any movements and elements conducting terrorist activities against the residents of the State of Israel". The Board further noted that, given the blanket non-specific warnings, the widespread attacks in all population centres and the fact that the civilian population was prevented from leaving the Gaza Strip, civilians increasingly responded to general warnings and ongoing attacks by seeking refuge within UNRWA premises, on the assumption that United Nations premises would be immune from attack. The influx of civilians into UNRWA shelters, the Board observed, rose dramatically after 600,000 leaflet warnings were dropped on 3 and 5 January by the IDF and radio broadcasts by the IDF on 5 January called for civilians to go to city centres. The Board stated that it believed that the IDF, having issued so many warnings, must have expected that many civilians would respond by seeking shelter away from their homes, and had an obligation to take account of such movements of the civilian population in its military operations, which presumably had the benefit of considerable aerial observation. The Board considered that responsibility for the incidents at UNRWA temporary emergency shelters should be viewed in that context, specifically the cases of the UNRWA Asma School, the UNRWA Jabalia School, the UNRWA Beit Lahia School and the UNRWA Field Office compound.

101. In relation to those incidents caused by military actions carried out by the IDF, the Board found that it could not accept that sufficient efforts and precautions were made to fulfil the responsibilities of the Government of Israel to respect the inviolability of and non-interference with United Nations premises and property or to fulfil its responsibilities to protect civilians and civilian objects on United Nations premises. The Board concluded that IDF actions involved varying degrees of negligence or recklessness with regard to United Nations premises and to the safety of United Nations staff and other civilians within those premises, with consequent deaths, injuries and extensive physical damage and loss of property. In the case of the UNRWA Jabalia School, it concluded that the precautions that the IDF may have taken as regards United Nations premises were inadequate, while the responsibility of the parties with respect to the many civilians killed and injured outside the school was to be assessed in accordance with the rules and principles of international humanitarian law, and required further investigation.

Responsibilities of the United Nations and communication with the Israel Defense Forces

102. The Board noted that it had discussed closely with the UNRWA and Department of Safety and Security personnel concerned the coordination arrangements and the communications between them and the IDF. It had also examined relevant documentation. It found no deficiencies in the efforts of United Nations personnel to communicate to the IDF all information that was needed to enable necessary action to be taken to ensure the safety and security of United Nations personnel. To the extent that any lack of awareness by IDF forces of the location of United Nations premises or of the movement of United Nations personnel contributed to any of the incidents, as the Board found that it might have done at least in incident (e), it was failures of communication within the IDF, and not between the United Nations and the IDF, that were responsible, the Board stated. The Board did not find that any action or inaction by United Nations personnel contributed in any way to the incidents within its terms of reference.

103. The Board noted that further incidents affecting United Nations premises occurred after previous incidents had been protested orally and in writing by the United Nations and deeply regretted by the IDF, further assurances had been given, the need to improve humanitarian coordination mechanisms of the IDF had been recognized and arrangements were said to have been strengthened. In that connection, the Board noted that, on 8 January 2009, in response to incidents in which UNRWA staff, convoys and installations had come under attack up to that date, UNRWA suspended staff movements, as it had decided that the risks to its staff exceeded the threshold required for operational safety. The Board went on to note that, at a high-level meeting at Ministry of Defense headquarters on 9 January, the United Nations had received assurances that the security of United Nations personnel, installations and humanitarian operations would be fully respected, including through undertakings of improved liaison and more effective internal coordination within the IDF. On that basis, the Board observed, United Nations staff movements that had been suspended were resumed. The Board stated it was of particular concern that, whatever measures might then have been taken to improve the effectiveness of coordination within the IDF, they did not prevent the subsequent incident at the **UNRWA Field Office compound** on 15 January or bring an earlier end to the artillery firing that caused very substantial damage there, nor did they prevent the incident at the **UNRWA Beit Lahia School** on 17 January.

104. Indeed, at the **UNRWA Field Office compound**, the Board observed that it was action beyond the call of duty by two UNRWA staff members that probably averted deaths, injuries and far greater physical damage. This would have resulted if fuel in tankers and underground storage tanks in the compound had been ignited by the burning white phosphorus-impregnated wedges from IDF shells that the staff members dislodged from under a fuel tanker. That action was taken at risk to their own lives, while heavy metal shell casings and white phosphorus-impregnated wedges were continuing to fall in the compound. The two UNRWA staff concerned were then assisted by other staff members in efforts to save property and limit the spread of the warehouse fire. The Board noted that those and many other UNRWA personnel, including during other incidents investigated by the Board in which they suffered injury or dealt with the deaths and injuries of others, showed exemplary

commitment to the work of the United Nations during a time of great personal difficulty, extreme stress and danger.

105. The Board reported that it had also discussed with UNRWA managers the efforts made to prevent any entry onto or misuse of United Nations premises by those engaged or likely to be engaged in military activity. Those efforts included the instructions and training given to staff to prevent such persons and weapons from entering United Nations premises. The Board found evidence that such efforts were indeed made by UNRWA staff at the three schools that were being used as shelters in incidents (b), (c) and (g) — the UNRWA Asma School, the UNRWA Jabalia School and the UNRWA Beit Lahia School. The Board noted that, at a meeting with UNRWA officials, the Commander of the Gaza Division of the IDF confirmed that the IDF had not found munitions in UNRWA schools, recognized that UNRWA had procedures in place to protect its schools from any abuse and undertook to ensure that troops were so informed.

106. The Board expressed the view that public allegations by a Member State of misuse of United Nations premises for military activity should only be made on the basis of certainty, because of the gravity of such allegations, their effect upon public perceptions of the Organization and their serious implications for the safety and security of its staff in the area of ongoing military operations. The Board recognized that, during ongoing military activities, the circumstances of incidents commanding media attention might not immediately be fully known. However, the Board remained extremely concerned by the initial statements made by the IDF and other spokespersons of the Government of Israel in two cases:

- In incident (c), that the IDF was responding to Hamas mortar fire from within the **UNRWA Jabalia School**, that Hamas had been hiding in or had taken over the school and that the school was booby-trapped with explosives.
- In incident (f), that Hamas had fired from the **UNRWA Field Office compound** before it was hit by IDF artillery.

107. The Board found that those allegations were untrue, continued to be made after it ought to have been known that they were untrue and were not adequately withdrawn and publicly regretted. The Board noted that, at the time of writing its report, the allegation that there was firing from the **UNRWA Jabalia School** remained posted on the website of the Ministry of Foreign Affairs of Israel.

Matters requiring further investigation

108. The Board observed that its terms of reference with respect to incident (c) required it to consider deaths and injuries occurring in the immediate vicinity of the **UNRWA Jabalia School**, as well as injuries inside the school. It noted that this incident involved the greatest loss of life of any of the incidents included in the terms of reference. The Board recalled its conclusion that those deaths and related injuries were caused by heavy mortar rounds fired by the IDF. The Board stated that, in view of the constraints to which it was subject, it could not adequately investigate the number of those deaths, which included women and children, the number and nature of injuries, or the civilian status of all those killed and injured. It expressed the view that those required a broader investigation to assess the responsibilities of

the parties in accordance with the rules and principles of international humanitarian law.

109. The Board went on to note that, in the course of its investigations, it became aware of a number of incidents involving deaths and injuries not included in its terms of reference, for which it considered that the United Nations had a particular responsibility, because of the employment or other relationship of the victims to the Organization, to ensure adequate investigations. The Board further remarked that it was also aware that there were many cases outside its terms of reference in which United Nations property sustained physical damage during the period covered by "Operation Cast Lead". It noted that, according to UNRWA, those included 36 of the 120 UNRWA schools (five of which were being used as temporary emergency shelters at the time), 7 of the 17 UNRWA health centres and 2 of the 11 UNRWA distribution centres.

Recommendations

110. The terms of reference of the Board included making recommendations concerning any action that, in the opinion of the team, should be taken by the United Nations, including any actions or measures that should be taken to avoid recurrence of the incidents. The Board made the following recommendations:

Regarding compensation and reparation

Recommendation 1

The Board recommended that the United Nations should seek formal acknowledgement by the Government of Israel that its public statements alleging that Palestinians had fired from within the UNRWA Jabalia School on 6 January and from within the UNRWA Field Office compound on 15 January were untrue and were regretted.

Recommendation 2

The Board recommended that the United Nations should take appropriate action to seek accountability and pursue claims to secure reparation or reimbursement for all expenses incurred and payment made by the United Nations in respect of:

- **death of or injury to any United Nations personnel or any third party on United Nations premises; and**
- **the repair or replacement of damaged, destroyed or lost property of the United Nations or United Nations personnel**

where the death, injury, damage, destruction or loss was found to be the responsibility of the Government of Israel, Hamas or any other party.

Recommendation 3

The Board recommended that the United Nations should promote the provision of assistance to civilians not employed by the United Nations who were killed or injured within United Nations premises, as well as to other civilians who themselves incurred injury or suffered the death of family members. Such

provision should include, inter alia, medical treatment, prosthetics and psychosocial support. Particular attention should be paid to the needs of children traumatized by the conflict and of caregivers for victims.

Regarding future coordination

Recommendation 4

The Board recommended that the United Nations should request the Government of Israel to strengthen internal mechanisms, especially those within the IDF, so as to ensure that United Nations personnel, operations and premises were not put at risk in the event of any future military operations affecting Gaza. The Board further recommended that the United Nations should request the Government of Israel to designate a high-level coordination focal point, to whom the United Nations could convey any problems which it believed needed to be addressed in respect of coordination and clearance arrangements in order to ensure the security of all United Nations personnel and premises, and the safe continuation of United Nations operations, in Gaza.

The Board recommended that the United Nations should request the Government of Israel to strengthen coordination arrangements for the safe movement of United Nations personnel and/or vehicles within Gaza during any future military operations and, as part of revised procedures, to ensure that written responses were provided in response to requests for clearance.

Recommendation 5

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, in the event that it planned any future military operation in proximity to United Nations premises, advance warning would be given, sufficient to enable the United Nations to ensure the security and safety of its personnel or other civilians within its premises.

Recommendation 6

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, at any time it believed that it had information that United Nations premises had been misused for military purposes, such information would be promptly conveyed to senior management of UNRWA or any other United Nations entity concerned, in confidence, so that they could fulfil their responsibility to investigate and take any appropriate action.

Commendation

Recommendation 7

The Board recommended that particular commendation should be conveyed to UNRWA staff Jodie Clark and Scott Anderson for their courageous action on 15 January 2009 to prevent the combustion of the fuel stored in the UNRWA Gaza Field Office compound during continuing IDF military action affecting the compound and, assisted by others, to minimize damages and loss at the compound, risking their own lives.

Regarding investigations

Recommendation 8

The Board, noting that the then Prime Minister of Israel promised to the Secretary-General that the report of the inquiry into incidents affecting United Nations premises would be provided to the United Nations, recommended that the United Nations should pursue the request for that to be done.

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, in the case of any future incident involving death or injury of United Nations personnel or damage to United Nations premises or sustained in the course of United Nations operations, which appeared to have been caused by IDF military action, prompt investigations would be carried out, that the report of such investigations would be made available to the Secretary-General and to any board of inquiry or other inquiry body he might establish in a timely manner, and that such a body would have access to IDF officers with relevant coordinating, operational or investigative responsibility.

Recommendation 9

The Board recommended that, in order to enable prompt and effective investigations, the United Nations should consider establishing stand-by arrangements to deploy trained investigators rapidly to any United Nations presence where such experts were not available, including persons with military, munitions, forensic and other relevant expertise, who could conduct initial investigations and assess, record and preserve evidence before a board of inquiry or other inquiry body visited the locations concerned.

Recommendation 10

The Board recommended that the Secretary-General, in consultation with the Commissioner-General of UNRWA, should ensure the timely investigation of the other incidents involving the death or injury of UNRWA personnel, on or off duty, and/or physical damage to UNRWA premises that were not included in the Board's terms of reference.

Recommendation 11

The Board noted that it was restricted to examining the nine incidents specified in its terms of reference. The Board further noted that it was not within its scope or capacity to reach conclusions on all aspects of those incidents relevant to the assessment of the responsibility of the parties in accordance with the rules and principles of international humanitarian law. The Board specifically recalled in that regard that it had been unable to investigate fully all circumstances related to the deaths and injuries that occurred in the immediate vicinity of the UNRWA Jabalia School, which involved the greatest loss of life of any of the incidents included in its terms of reference. It also referred to the incident involving the deaths of nine trainees from the UNRWA Gaza training centre, which occurred on 27 December 2008 immediately across the road from the UNRWA compound in Gaza City. It went on to state the view that the deaths, injuries and damage caused by the firing of smoke projectiles containing white phosphorus into populated urban areas of Gaza,

including in the incidents at the UNRWA Field Office compound and the UNRWA Beit Lahia School, also required further examination in relation to the rules and principles of international humanitarian law. More generally, the Board noted that it was deeply conscious that those were among many incidents during "Operation Cast Lead" involving civilian victims and stated that, where civilians had been killed and there were allegations of violations of international humanitarian law, there should be thorough investigations, full explanations and, where required, accountability. **It accordingly recommended that those incidents should be investigated as part of an impartial inquiry mandated, and adequately resourced, to investigate allegations of violations of international humanitarian law in Gaza and southern Israel by the IDF and by Hamas and other Palestinian militants.**